

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN M. LOUK, ALEX BREWER and RONNIE J. FULLER

Appeal No. 96-1337
Application 08/229,804¹

HEARD: June 11, 1998

Before CALVERT, COHEN and ABRAMS, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 2, and 4 through 20. These claims constitute all of the claims remaining in the application.

¹Application for patent filed April 19, 1994.

Appeal No. 96-1337
Application 08/229,804

Appellants' invention pertains to a convertible tree stand platform for rifle and bow-hunting. An understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in "Appendix A" of the brief (Paper No. 8).

As evidence of obviousness, the examiner has applied the documents listed below:

Gibson et al. 1988 (Gibson)	4,726,447	Feb. 12,
Jamieson 1991	5,052,516	Oct. 01,
Louk et al. 1993 (Louk)	5,234,076	Aug. 10,

The following rejection is the sole rejection before us for review.

Claims 1, 2, and 4 through 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Louk in view of either Jamieson or Gibson.

The full text of the examiner's rejection and response to

the argument presented by appellants appears in the answer (Paper No. 9), while the complete statement of appellants' argument can be found in the brief (Paper No. 8).²

OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellants' specification and claims,³ the applied patents,⁴ and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determination which follows.

² A supplement to the brief (Paper No. 14) was filed, pursuant to an order for compliance (Paper No. 13), to provide information omitted from the brief.

³ We note that while claim 1, line 3 and dependent claims (e.g., claims 2 and 8) recite a "main frame", lines 10 and 14 of claim 1 set forth a "main frame member". This inconsistency should be remedied during any further prosecution before the examiner.

⁴ In our evaluation of the applied patents, we have considered all of the disclosure thereof for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

Appeal No. 96-1337
Application 08/229,804

We reverse the examiner's rejection of appellants' claims under 35 U.S.C. § 103.

At the outset, we focus upon the content of independent claim 1. The claimed tree stand platform is specified as being "convertible". As further set forth in the claim, the rear portion of the main frame is disposed at an angle, with respect to main frame sides defining a reference plane, so as to extend in a plane different from the reference plane. First and second members are "pivotally coupled" to the main frame so as to be moved through the reference plane. A flexible connector secured to the main frame and engaged with the first and second members holds the platform to a tree. The claimed "convertible" tree stand platform is constructed and arranged to be mounted in (1) a "bow-hunting position" wherein the rear end portion is disposed below the reference plane and the first and second members are disposed above the reference plane and in (2) "a rifle-hunting position" wherein the rear end portion and first and second members are disposed above the reference plane.

Turning now to the prior art applied by the examiner, we

find that none of the art addresses a "convertible" tree stand platform. More particularly, the Louk patent teaches a hunter's tree stand characterized by an upper, seating platform (Figure 1) and a lower, standing platform (Figure 2). Padding 14 on base 12 (rear end portion) of the upper, seating platform serves to protect the a user's knees when moving from an outward facing position (column 2, lines 46 through 49). The patent instructs those versed in the art that pivotally mounted folding side supports move between an in use perpendicular orientation and a storage or travel folded position flat against frame 6 (Figure 5; column 3, lines 11 through 23). Jamieson addresses a deer stand including a chair assembly 22 and a footrest 24 (Figure 1), while Gibson teaches a tree climbing support comprising a body support 2 and a foot support 23 (Figure 1). The body support of Gibson includes a back rest 8 which is selectively pivotable (Figure 5) into a non-functional or carrying position (Figure 3) and an upstanding functional position (Figure 1).

From our perspective, a combined consideration of the aforementioned prior art teachings, at best, would have been

Appeal No. 96-1337
Application 08/229,804

suggestive to one having ordinary skill in the art of altering the rear portion of the upper, seating platform of Louk to include a back support. However, this modified tree stand would not be the "convertible" tree stand now claimed.

Setting aside what appellants have informed us of in the present application, it is clear to us that the Louk patent simply offers no motivation or instruction to those of ordinary skill in the art to pivotally couple the first and second members to the main frame so that the members can be moved through the reference plane defined by sides of the main frame, as now claimed, to effect a tree stand or platform that is "convertible" and

structurally capable of being held to a tree in alternative bow-hunting and rifle-hunting positions. Since the evidence of obviousness before us fails to suggest the claimed invention, the rejection under 35 U.S.C. § 103 must be reversed.

The decision of the examiner is reversed.

Appeal No. 96-1337
Application 08/229,804

REVERSED

IAN A. CALVERT
Administrative Patent Judge

IRWIN CHARLES COHEN
Administrative Patent Judge

NEAL E. ABRAMS
Administrative Patent Judge

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Appeal No. 96-1337
Application 08/229,804

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